



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

JUL 21 2014

To: Peter T. Jenkins
Center for Food Safety
660 Pennsylvania Ave. SE, Suite 302
Washington, DC 20003

Subject: Letters Regarding New Label Language for Bag/Tags for Treated Seeds

Dear Mr. Jenkins:

This letter is in response to your letters addressed to Fawad S. Shah of the U.S. Department of Agriculture and myself dated April 23, 2014, and May 5, 2014. Your letters raised concerns regarding new label language for bag/tags for treated seed that is being developed by pesticide and seed company officials.

In your May 5th letter, you assert that EPA and USDA have violated the requirements of the Federal Advisory Committee Act (FACA) with respect to a series of meetings EPA and USDA have participated in with pesticide and seed company officials regarding labeling language for bags and tags of pesticide-treated seed. You assert that these meetings constituted a FACA "advisory committee" and that EPA and USDA should not have and may not further engage in these meetings unless and until they comply with the procedural requirements of FACA, including opening these meetings to the public and providing prior notice of the meetings in the Federal Register.

I have discussed this matter with our Office of General Counsel and am confident that EPA and USDA staff did not violate FACA in engaging in these discussions with pesticide and seed industry officials. The requirements of FACA would only apply if this group were "established or utilized" by EPA and/or USDA to obtain group advice or recommendations. Under FACA, a group is not established or utilized by a federal agency unless it is actually formed by the federal agency or is subject to actual management or control by the agency. In this instance, neither EPA nor USDA formed this group nor does either agency manage or control the group. Rather, these meetings were organized by pesticide and seed industry officials who also set the agendas for the meetings. Accordingly, EPA and USDA neither established nor utilized this group within the meaning of FACA. For these reasons, these meetings were not subject to FACA. EPA will therefore not insist that future meetings organized by these companies be conducted in accordance with FACA procedures. Further, the primary topic of discussion was not EPA's regulation of registered pesticide product labeling or USDA's regulation of seed, but rather, the substance of voluntary labeling statements on seed bags. The

federal government also has an interest in seeing that appropriate information gets to the grower to limit possible risks from treated seed, and therefore decided to engage in these meetings. But to be clear, these seed products are not currently regulated by EPA as registered pesticides and the discussions did not address what EPA's position should be with respect to the regulation of treated seed products and product labeling under FIFRA.

In both your letter of April 5 and May 23, you have stated your belief that EPA should be regulating treated seeds products, including product labeling, and you have indicated an interest in being part of future discussions EPA may hold on this subject. Except where the requirements of FACA do apply, as noted, EPA will not insist that all meetings it has on this topic with pesticide companies, seed companies or non-governmental organizations, be open to the public. We would be happy, however, to meet with you and/or other members of your organization to discuss your position on the regulation and labeling of seed bags. Indeed, on June 6th, EPA did meet with Larissa Walker from CFS and with other non-governmental organizations to discuss, among other things, EPA's position with respect to the regulation of seed bags containing pesticide-treated seed. If you wish to continue these discussions with EPA, please contact me at (703) 305-6362 or by e-mail at Herndon.George@epa.gov to schedule a meeting at your convenience.

Sincerely,



Jeff Herndon, Associate Director
Registration Division